

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT N. WASHINGTON,
Petitioner,

No. C 09-0978 SBA (PR)

v.

**ORDER GRANTING MOTION TO
DISMISS PETITION AS SUCCESSIVE**

JOHN W. HAVILAND, Acting Warden,
Respondent.

(Docket no. 8)

Petitioner Robert N. Washington filed this pro se habeas corpus action pursuant to 28 U.S.C. § 2254.

Before the Court is Respondent's motion to dismiss, alleging that the petition should be dismissed as a second or successive petition. Petitioner opposes the motion.

The record shows that Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 02-2146 MJJ (PR). The Court denied the first petition on the merits.

DISCUSSION

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly, Respondent's motion to dismiss the petition as a second or successive petition (docket no. 8) is GRANTED. The instant petition is DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary order.

CONCLUSION

For the foregoing reasons, Respondent's motion to dismiss the petition as a second or successive petition (docket no. 8) is GRANTED, and the petition is DISMISSED pursuant to 28


1 U.S.C. § 2244(b). The Court has rendered its final decision on this matter; therefore, this Order
2 TERMINATES Petitioner's case.

3 The Clerk of the Court shall terminate all pending motions and close the file.

4 This Order terminates Docket no. 8.

5 IT IS SO ORDERED.

6 DATED: 5/17/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ROBERT N. WASHINGTON,

5 Plaintiff,

6 v.

7 / et al,

8 Defendant.
9 _____/

Case Number: CV09-00978 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on May 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Robert N. Washington P72776
17 California State Prison - Solano
18 P.O. Box 4000
19 Vacaville, CA 945696-4000

20 Dated: May 21, 2010

21 Richard W. Wieking, Clerk
22 By: LISA R CLARK, Deputy Clerk
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